REMARKS

Reconsideration and allowance are respectfully requested.

Claim 21 stands objected to noting an informality which has been corrected by amendment. Withdrawal of the objection is requested.

The Examiner has withdrawn the allowability of all pending claims in view of newly applied U.S. patent 6,385,203 to McHale et al. Specifically, claims 20-22,24-28, and 30-34 stand rejected for anticipation based on McHale '203. This rejection is respectfully traversed.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). McHale '203 fails to satisfy this rigorous standard just as previously applied McHale '413 failed.

McHale '203 discloses a communication system shown in Figure 1 with a central office 14 (called a "station") that includes a communication server 58 used to provide high speed data communications service. Basic elements of the server 58 are shown in Figure 2, more details of the controller 80 are shown in Figure 3, and further details of the switch and modem pool are shown in Figure 4. Since all subscribers do not necessarily desire access to data communications services on a continuous basis and many have different needs, McHale '203 limits the number of high speed, broadband XDSL modems without the larger number of subscribers detecting any reduction in service.

But McHale '203 fails to disclose all the features in independent claim 20. For example, McHale fails to disclose the claimed net terminal. The Examiner has not read net terminal onto any structure. To the extent the Examiner is reading this feature on interface 24, interface 24 does not include xDSL modems, as recited in claim 20, line 3. To the extent that the Examiner is reading net terminal on the computer 22, computer 22 includes only a single XDSL modem 30 and not the recited plural xDSL modems. See col. 5, line 12 and lines 22-24. The interface 24 does not show a modem, and even if it did, the interface 24 does not show the XDSL modem 30 which is shown in the computer 22. There is no teaching of both in-band and xDSL types of modems in a net terminal in McHale '203.

McHale '203 also does not disclose the net terminal also including "an in-band modem" for transmitting a "user terminal identity to a controller," as recited in claim 20. Nor does McHale '203 teach establishing the bi-directional broadband data path "using the in-band modem connection of the network terminal for initial installation of the broadband data transmission path." Col. 6, lines 45-47 is not relevant because it relates to a "single bidirectional and multiplexed signal for all subscribers" (emphasis added). It also says nothing about using an in-band modem connection to set up a bi-directional broadband data path. Col. 9, lines 25-30 are similarly not relevant because they simply discuss the modems in the access point/station 14. There is no description of using an in-band modem for any purpose let alone for initial installation of the broadband data transmission path.

Apparatus claim 21 recites plural net terminals, "each net terminal including an in-band modem and a first XDSL modem." There is no description in McHale of these two different types of modems in each net terminal. And as mentioned above, the Examiner has not even identified what structure in McHale corresponds to the claimed net

terminal—let alone plural net terminals. The details of interface 24 are not provided. And the XDSL modem 30 is shown in computer 22—not the interface 24. For reasons explained above for claim 20, McHale also fails to teach:

> prior to establishment of the bi-directional broadband connection, the in-band modem in the net terminal associated with the one user terminal is configured to establish a preliminary communication with the controller to engage the controller to initialize one of the second xDSL modems for the bi-directional broadband connection.

McHale also fails to disclose dependent claim feature 22 where the "in-band modem and the first xDSL modem are configured to operate independently and in parallel in the net terminal."

Independent method claim 28 recites "each terminal being coupled to one of plural net terminals, and each net terminal including an in-band modem and a first xDSL modem." The Examiner fails to identify any net terminal in McHale. The subscriber 12 in Figure 1 of McHale shows only a single XDSL modem 30 in the computer 22. Claim 28 also recites: "establishing an initial communication from the in-band modem of the net terminal associated with the one user terminal and a controller to initialize one of the second xDSL modems for the bi-directional broad band in connection." This step is not disclosed in McHale. The text at col. 9, lines 18-30 relates only to the operation of the communications server 58 and it does not involve the subscriber 12. There certainly is no description of an in-band modem of the net terminal being involved. Moreover, McHale fails to disclose:

> in response to the initial communication [from the in-band modem of the net terminal], the controller configuring the first xDSL modem [in the net terminal] and one of the second xDSL modems [in the first access point] to establish the bi-directional broadband connection between the user terminal and the first access point.

One of the benefits that McHale can not readily achieve is set forth in claims 33 and 34 which relate to establishing multiple, bi-directional, broadband connections with multiple user

terminals, and in particular, situations where those multiple connections are to be established simultaneously, as recited in claim 34.

Lacking multiple features of the pending claims, it is respectfully submitted that the rejection based on McHale should be withdrawn.

Claim 20 stands provisionally rejected under 35 U.S.C. 101 as allegedly claiming the same invention as that of claim 7 of co-pending application serial number 09/741,741. Although Applicants do not agree with the Examiner's double patenting rejection, Applicants submit a Terminal Disclaimer to obviate this rejection. Withdrawal of the provisional double patenting rejection is respectfully requested.

The application is in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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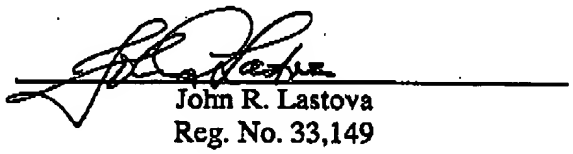
By: 
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